

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8415 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PRAMODKUMAR MAFATLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR DP JOSHI, AGP for Respondents No. 1 & 2

MS DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/12/1999

ORAL JUDGEMENT

#. The Joint Secretary to the Government of Gujarat,
by virtue of an order dated 24th September, 1999, passed
in exercise of powers under Section 3(1) of the
Prevention of Black Marketing and Maintenance of Supplies
of Essential Commodities Act, 1980 ("PBM Act" for short)

ordered detention of the present petitioner-Pramodkumar Mafatlal Patel, resident of Utsav Apartment, Nava Vadaaj, Ahmedabad.

#. The grounds of detention of even date indicate that gross irregularities were detected in the firm of the petitioner, having found in possession large quantity of cotton seed oil, which he claimed to have purchased from various parties and received through various tankers in loose form. On cross-checking, it was found that the numbers of the vehicles given by the petitioner were relating to Trucks, Agro Trailers, Metador, Tipper, Passenger Rickshaw and Water Tanker and, after considering all these aspects, the authority recorded a subjective satisfaction that the petitioner had committed gross irregularities which would disrupt the supply of essential commodity of edible oil.

#. The petitioner challenges the order of detention on various counts. The main ground is that a representation sent on behalf of the petitioner on 12th October, 1999 has not at all been considered by the State Government. The second ground is that the basic documents on which the detaining authority formed an opinion that the vehicles claimed to have been used for transportation of edible oil were, in fact, vehicles which could not have been used for transportation of loose oil, have not been supplied to the petitioner and, therefore also, the detention is bad.

#. Mr. Prajapati, learned advocate appearing for the petitioner, has restricted his arguments to the above grounds. He submitted that admittedly the representation made by the advocate for the petitioner has not been considered by the authority on the ground that the representation is not on behalf of the petitioner. He submitted that, if the representation produced by the petitioner (Annexure-D) is considered, two possibilities can be contemplated. The first possibility is that there is gross non-application of mind, as in the last paragraph of the representation, it has been categorically stated that it is made on behalf of Vinodkumar S. Patel and Pramodkumar M. Patel, which has not at all been read by the authorities and the second possibility is that, although it has been read, the authority has deliberately not considered their representation taking a technical stand that the representation was submitted by the learned advocate upon the instructions and on behalf of his client, Vinodkumar Shankerlal Patel. Mr. Prajapati submitted that in either case, the detention shall stand vitiated.

Mr. Prajapati then submitted that if the grounds of detention are considered, in paragraph 11 it is stated that verification was carried out through the Regional Transport Officer and it was found that the vehicles were not suitable for transportation of edible oil in loose form. In this regard, the Regional Transport Officer had recorded statements, which is clear from copy of letter written by Collector, Rajkot to Director, Civil Supplies Department, Gandhinagar on 22nd July, 1999, copy of which has been furnished to the detenu and produced on record of this Court. Mr. Prajapati submitted that, if the statements were recorded and Panchkam was made, they would form primary evidence or document and they were before the detaining authority. The necessary presumption is that they must have been considered by the authority and, therefore, they ought to have been supplied to the detenu. Non-supply of these documents has resulted into infringement of the petitioner's right of making an effective representation. Mr. Prajapati, therefore, submitted that the petition may be allowed and the detention order may be quashed.

#. Mr. Joshi, learned Assistant Government Pleader appearing for respondents No.1 and 2 submitted that, so far as the first point is concerned, it is amply clear that the representation was made by the advocate upon the instructions and on behalf of Shri Vinodkumar Shankerlal Patel, who is not the detenu-petitioner herein. This aspect is made clear in paragraph 12 of the affidavit in reply. He, therefore, submitted that the first ground may not be accepted by this Court.

As regards the second contention raised on behalf of the petitioner, Mr. Joshi submitted that the documents which were relied upon by the detaining authority have been supplied to the detenu and it was not necessary for the detaining authority to supply the statements recorded by the R.T.O. for verifying/cross-checking the contention raised by the detenu that particular vehicles were used for transporting edible oil. He, therefore, submitted that the petition may be dismissed.

#. Ms. Davawala, learned Additional Central Government Standing Counsel appearing for respondent No.3, has also opposed the petition.

#. The Court is, therefore, required to address the two grounds advanced by the petitioner to assail the order of detention.

As regards the representation, the controversy spins around the first and last paragraphs of the representation (Annexure-D). In the first paragraph of the representation, it is stated as under :-

"Upon the instructions and on behalf of my client Shri Vinodkumar Shankarlal Patel, resident of F/29/409, Utsav Apartment, Bhavsar Hostel, New Wadaj, Ahmedabad, I say that my client has been unnecessarily harassed by the Civil Supply Department. False allegations have been made against my client."

The last paragraph of the representation runs as under:-

"I say for the same grounds, my clients Shri Vinodkumar S. Patel and Shri Pramodkumar M. Patel are detained by the orders of detention dated 24.9.99. Kindly accept the above stated request for supply of documents in case of both the detenuess. Kindly revoke the orders of detention. If you are not inclined to revoke the orders of detention, copies of the same may be taken out and the same may be forwarded to the concerned authorities for their consideration."

#. It is settled proposition of interpretation of a document that the document is to be read as a whole and not on a piecemeal basis. A single sentence divorced from other contents a document cannot be read in isolation and interpreted in a suitable manner. Likewise, it is also settled proposition that in such cases of detention, the representation need not be construed in a technical manner, but a liberal construction is to be made, so that no prejudice is caused to the detenu and his liberty.

#. If the first paragraph of document Annexure-D is read, it indicates that the representation is made by the learned advocate on instructions of Vinodkumar Shankarlal Patel, who is his client. Differently put, it indicates that Vinodkumar S. Patel gave him instructions as a client. It cannot be taken to mean that the petitioner is not the client. The last paragraph of the representation makes it clear that the representation is intended to mean both Vinodkumar S. Patel and

Pramodkumar M. Patel (present petitioner) because it also says "kindly revoke the orders of detention".

##. It would be beneficial to make a reference of decisions of the Apex Court which lay down the principles to be applied while considering a representation. In *Smt. Shalini Soni v. Union of India and Ors.*, A.I.R. 1981 SC 431, Their Lordships observed:

"The Writ Petition has to succeed on both the grounds. As we mentioned earlier the answer of the respondents in regard to the ground based on the failure of the detaining authority to consider the representation dated July 27, 1980 submitted by the detenu through his Advocate was not that the representation was ever considered but that it was not a representation at all. We are unable to agree with the submission made on behalf of the respondents. The representation has not to be made in any prescribed form. There is no formula nor any magical incantation like "open sesame" to be repeated or chanted in order to qualify a communication as a representation. So long as it contains a demand or a request for the release of the detenu in whatever form or language couched and a ground or reason is mentioned or suggested for such release, there is no option but to consider and deal with it as a representation for the purpose of Article 22(5) of the Constitution." (Emphasis supplied).

10.1 Likewise, in *Balchand Chorasias v. Union of India and Ors.*, A.I.R. 1978 SC 297, it has been said that the representation made by the detenu has to be construed liberally and not technically so as to frustrate or defeat the concept of liberty. Thus, the authority ought not to have adopted a technical approach by banking upon the first paragraph of the representation and neglecting the last paragraph altogether.

##. This Court is informed that the detaining authority did act upon this representation in respect of Vinodkumar Shankerlal Patel. This indicates that the last paragraph was considered by the detaining authority, but the interpretation made was hyper-technical and was influenced by the first paragraph of the representation. This is not what is expected of such authorities while dealing with the representations, as can be seen from the judgment of the Apex Court in the case of *Balchand Chorasias* (supra). The petition, therefore, deserves to be allowed on this count alone.

##. Now, coming to the second point raised on behalf of the petitioner, if the grounds of detention are considered, it is clear that the detaining authority has recorded a satisfaction and a conclusion that certain vehicles other than tankers were found, as per verification made through Regional Transport Officer. The report of R.T.O., on which this conclusion is based, is, undisputedly, not supplied to the detenu. Perusal of a letter addressed by Collector, Rajkot, on 22nd July, 1999 to Director, Civil Supplies Department, Gandhinagar, indicates that verification was made through Supply Inspectors by recording statements and making Panch Rojkam. Statements of owners of the vehicles were recorded and were enclosed with that letter, but, undisputedly, the same have not been supplied to the detenu. That letter also indicates that verification was done through Regional Transport Officer, Rajkot. Thus the statements, Panch Rojkam, etc. were with the detaining authority when the order of detention was passed. Legitimate presumption is that, they must have been considered, if not it would be still worse. What weightage was given to these statements can be known only to the detaining authority. But it is clear from the grounds of detention that the fact that the vehicles were not tankers that can be used for transporting edible oil in loose form did have a bearing on the order of detention is revealed from the grounds of detention. If that be so, the basic documents were expected to be supplied to the detenu. Non-supply of these documents has resulted into infringement of the right of the detenu of making an effective representation guaranteed by the Constitution.

12.1 Viewed conversely, it is not the case of the detaining authority that these aspects were not considered by it and what influenced most the mind of the detaining authority cannot be assessed and, therefore, the material on which the satisfaction is arrived at by the detaining authority having not been supplied to the detenu has resulted into infringement of right of making an effective representation and would, therefore, vitiate the detention.

##. In view of the above discussion, the petition deserves to be allowed and is allowed. The order of detention dated 24th September, 1999, passed in respect of the petitioner-Pramodkumar Mafatlal Patel is hereby quashed and set aside. The petitioner-detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to

costs.

[A.L. DAVE, J.]

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